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SUBJECT: Nigeria: 2003 Special 301 Review on IPR
Protection

Ref: State 43677

Summary

1. Piracy of optical media remains a major issue in Nigeria. Lack of enforcement resources and trained enforcement staff, coupled with inadequate public and government understanding and appreciation of the benefits of IPR protection, make reversing this situation a difficult, long-term effort. The Government of Nigeria (GON)--by far the largest user of computers in the country--is making a serious effort to see that all government agencies use only licensed software, but it still remains the largest user of pirated software in the country. Meanwhile, the GON appears stalled in its efforts to bring its IPR legislation into full compliance with TRIPS. Admittedly, there has been little progress over the last year, but we believe that naming Nigeria to the Watch List is unwarranted. In fact, doing so might make further progress on this issue considerably more difficult. End Summary.

Optical Media Piracy

2. Nigeria remains a large market for a wide range of pirated optical media products. Although no formal surveys have been conducted, Emboffs observe that nearly all recordings offered for sale are pirated. Much of the pirate industry is centered in one section of Lagos, where several local optical media companies have the capacity to produce over 500 copies of CDs, DVDs, and VCDs daily.

3. The GON has slowly begun to take measures to counter the problem. In early 2002, the Nigerian Copyrights Commission (NCC) said it would require optical media manufacturers to include anti-piracy devices (for example, holograms) on their recordings. This program has been subject to numerous delays, but the NCC announced recently that all media would include holograms by March 2003. The NCC has no plans to require manufacturers to include source identification codes. Nor are there plans to enact legislation that would specifically target optical media piracy.

4. To date, the GON has demonstrated only tepid action against the pirate industry, preferring, for example, to attack videocassette rental shops rather than manufacturers of pirated videocassettes. Coordination among law enforcement authorities remains almost non-existent.

Use/Procurement of Government Software

5. While the extent of GON consumption of pirated software is unknown, the government itself is considered the largest abuser of IPR. Many, if not most, government offices, utilize pirated software. In early 2002 President Obasanjo directed all ministries and parastatals to account for the software in their possession, and to regularize software usage.

6. To that end, the President tasked the National Information Technology Development Agency (NITDA)--in coordination with the NCC--with auditing all software in use by the government and negotiating license agreements with the software owners. NITDA has faced delays in completing the first step of the process, determining the volume and types of software in use. NITDA promised to provide an inter-ministerial review committee with a report by September 2002 and then December 2002, but the

report is still pending.

17. Although the audit report has not been completed, NITDA attempted to begin negotiations with at least one software company, Microsoft. A participant in a recent meeting between NITDA and Microsoft says that NITDA lacked sufficient data on the government's use of Microsoft products to make any headway. It is likely that NITDA--underfunded and poorly staffed, given the enormity of its new mandate--will continue to make similar missteps.

TRIPS Compliance

18. Nigeria is a signatory to the Universal Copyright Convention and the Berne Convention. In 1993, Nigeria became a member of the World Intellectual Property Organization (WIPO) and thereby became party to most of the major international agreements on intellectual property rights. The Patents and Design Decree of 1970 governs the registration of patents; and the Standards Organization of Nigeria is responsible for issuing patents, trademarks, and copyrights. Once conferred, a patent conveys an exclusive right to make, import, sell, or use the products or apply the process. The Copyright Decree of 1988, based on WIPO standards and U.S. copyright law, makes it a crime to export, import, reproduce, exhibit, perform, or sell any work without the permission of the copyright owner.

19. In 1999, amendments to the Copyright Decree incorporated most TRIPS protections for copyrights, except provisions to protect geographical indications and undisclosed business information. The amendment also gave the Nigerian Copyright Commission (NCC) additional enforcement powers.

10. Four TRIPS-related bills and amendments are currently in various stages of preparation, but none have been forwarded to the National Assembly. The World Intellectual Property Organization (WIPO) has reviewed the first three of the acts listed (all except the plant and animal variety legislation) and, according to the GON, determined that their enactment would bring Nigeria into full compliance with TRIPS.

--The NCC and Trademarks and Patents Registry (TPR) are preparing a bill that would merge both agencies to establish an Intellectual Property Commission (IPCON). The draft law also provides for the new commission to retain a portion of the fees it collects to fund operations and programs.

--The Ministry of Justice is reviewing an amendment to the Patents and Designs Act that will make comprehensive provisions for the registration and proprietorship of patents and designs.

--The Ministry of Justice is also reviewing an amendment to the Trademarks Act that will improve existing legislation relating to the recording, publishing, and enforcement of trademarks.

--Various agencies are drafting a bill to provide protection for plant varieties, including biotechnology, and animal breeds.

Enforcement

11. Law enforcement, particularly for patents and trademarks, remains weak, and the judicial process is slow and subject to corrupting influences. Inadequate funding, lack of computerization to facilitate enforcement, and staffing shortages contribute to Nigeria's weak IPR enforcement climate.

12. A key deficiency remains inadequate understanding and appreciation among regulatory officials, distributor networks, and consumers of the benefits of intellectual property rights protection. This is coupled with the fact that the average consumer price of legally produced or imported materials, particularly software, is beyond the reach of most Nigerians. In particular, Nigeria's over-stretched and under-trained police lack understanding of IPR. The Nigerian Customs Service has received some WIPO sponsored training, but even those officers who can

identify pirated imports are not allowed, under the current law, to impound the offending materials unless the copyright owner has filed a complaint against that particular shipment, which is only done in very rare instances.

13. Companies rarely seek trademark or patent protection because it is generally perceived as ineffective. Nonetheless, recent government efforts to curtail IPR abuse have yielded some results. A number of high profile actions have been taken against IPR violators. The Nigerian Police, working closely with the NCC, have occasionally raided enterprises allegedly producing and selling pirated software and videos. Industry sources indicate that the NCC has been reinvigorated to an extent by the appointment of a new director general in July 2002, who voices a commitment to enforcement. Microsoft reports more successful raids in 2002, including a bank that has been charged in court, and settlements that have resulted in the purchase of appropriate licenses.

14. However, most raids appear to be conducted against small-scale pirates, and not the large, well-connected ones. Moreover, very few cases involving copyright, patent, or trademark infringement have been successfully prosecuted, and most cases continue to be settled out of court. It is unlikely that law enforcement will improve without assertive political leadership, policy direction, and adequate financial support.

15. IPR cases are handled primarily by the Federal High Court, whose judges generally enjoy broad familiarity with IPR protection law. However, in the lower courts, a judge handling the case might not be knowledgeable in IPR, and misapplication of the law is not uncommon. Lagos is the only region in Nigeria where the majority of judges have a reasonable knowledge of IPR. Further exacerbating the problem, most legal practitioners do not possess adequate knowledge of intellectual property rights to properly handle cases. In 2002, the USG's Civil Law Development Program (CLDP) continued to educate Nigerian civil and judicial officials on IPR.

16. Rightsholders continue to push for improved law enforcement. Nigerian artists--including writers, filmmakers, and musicians--have in recent years campaigned for more effective copyright protection and amendments to existing law. Lawyers active in IPR issues formed the Industrial Property Law Interest Group (IPLIG) to educate the public and lobby on behalf of industrial IPR issues. IPLIG has sponsored several copyright conferences and initiated an IPR course at the Lagos Law School. Software company representatives, represented by the Business Software Alliance (BSA), continue to work directly with the Nigerian Government to reduce the now high number of agencies using pirated software. Nigerian filmmakers formed the Proteus Entertainment Agency to challenge copyright infringement and promote stronger law enforcement.

Comment

17. Although Nigeria is a large market for pirated goods, it should not be included in USTR's Special 301 Watch List. The GON continues to make efforts to shore up its regulatory and legal framework. Admittedly, enforcement remains poor, mostly due to inadequate funding but also the result of competing priorities. Overall, though, the GON has made a serious effort to improve IPR protection. Obasanjo's effort to ensure that GON agencies use licensed software is this year's best example of this commitment. Furthermore, naming Nigeria to the Watch List would only serve to incite latent anti-Western sentiments in Nigeria and complicate efforts of local and foreign rights-holders to strengthen the protection afforded their intellectual property.

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